

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sara Griffin	Team: Squad #5	CCRB Case #: 201803197	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/18/2018 3:34 PM	Location of Incident: 49 West 32nd Street	Precinct: 14	18 Mo. SOL 10/18/2019	EO SOL 10/18/2019	
Date/Time CV Reported Tue, 04/24/2018 2:53 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 04/24/2018 2:53 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Vincent Calvanese	25702	943040	MTS PCT
2. POM Robert Rivera	01434	951152	MTS PCT
3. An officer			MTS PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Andrew Ho	5155	941907	MTS PCT
2. POM Shadi Khader	08767	951869	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
B.POM Robert Rivera	Force: Police Officer Robert Rivera used physical force against § 87(2)(b)	
C.POM Robert Rivera	Force: Police Officer Robert Rivera used physical force against § 87(2)(b)	
D.POM Robert Rivera	Force: Police Officer Robert Rivera used physical force against § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On April 24, 2018, § 87(2)(b) filed the following complaint via the CCRB website. On April 18, 2018, at approximately 3:34 PM, § 87(2)(b) and his girlfriend, § 87(2)(b) were walking on East 32nd Street in Manhattan. An unidentified officer allegedly said, “What the fuck are you looking at?” to § 87(2)(b) (**Allegation A-Discourteous Language**, § 87(2)(g)). PO Robert Rivera of the 14th Precinct allegedly utilized an open hand strike against § 87(2)(b) (**Allegation B-Force**, § 87(2)(g)). PO Rivera allegedly pushed § 87(2)(b) up against a nearby wall (**Allegation C-Force**, § 87(2)(g)). PO Rivera allegedly utilized a closed fist hand strike against § 87(2)(b) (**Allegation D- Force**, § 87(2)(g)). § 87(2)(b) was arrested and charged with § 87(2)(b).

§ 87(4-b), § 87(2)(g)

There is no known video footage of the incident.

Findings and Recommendations

Allegation A- Discourtesy: An officer spoke discourteously to § 87(2)(b)

It is undisputed that § 87(2)(b) and his girlfriend, § 87(2)(b) were stationary on West 32nd Street. § 87(2)(b) was rolling a marijuana cigarette. After rolling the cigarette, § 87(2)(b) and § 87(2)(b) walked down West 32nd Street, where they encountered the 14th Precinct’s Anti-Crime team, comprised of PO Vincent Calvanese, PO Robert Rivera, PO Shadi Khader, and Sgt. Andrew Ho.

§ 87(2)(b) (Board Review 1) alleged that as the Anti-Crime team walked by § 87(2)(b) and § 87(2)(b) one of the officers, who § 87(2)(b) could not identify, stated, “What the fuck are you looking at?”

PO Robert Rivera, PO Vincent Calvanese, PO Shadi Khader, and Sgt. Andrew Ho (Board Review 2-5) each denied saying and denied hearing another officer say, “What the fuck are you looking at?”

§ 87(2)(b) (Board Review 6) also alleged that one of the officers asked § 87(2)(b) “What the fuck are you looking at?”, but § 87(2)(b) was also unable to identify which officer said this.

§ 87(2)(g)

Allegation B- Force: Police Officer Robert Rivera used physical force against § 87(2)(b)

Allegation C- Force: Police Officer Robert Rivera used physical force against § 87(2)(b)

It is undisputed that after PO Rivera approached § 87(2)(b) to arrest him for the marijuana cigarette in public view, a struggle ensued.

In the initial narrative of his website complaint, (Board Review 7), § 87(2)(b) alleged PO Rivera slapped him in the face before pushing him into a nearby wall. In § 87(2)(b)'s in-person statement (Board Review 1) he alleged PO Rivera pushed him against a nearby wall, however, § 87(2)(b) did not allege PO Rivera slapped him. § 87(2)(b) testified to resisting by pulling his arms to the front of his body. § 87(2)(b) testified he resisted for approximately 15 to 30 seconds.

PO Rivera (Board Review 2) acknowledged using his open right hand to slap § 87(2)(b) on the left side of his face. PO Rivera slapped § 87(2)(b) because § 87(2)(b) jerked his arm back and across his body when PO Rivera initially grabbed his arm. PO Rivera believed § 87(2)(b) was going to strike him. PO Rivera slapped § 87(2)(b) because he wanted to give him a “shock and awe” effect and protect himself. After slapping him, § 87(2)(b) flailed his arms and attempted to pull away from PO Rivera. PO Rivera placed his arm across § 87(2)(b)'s chest and used his body weight to push § 87(2)(b) back-first against a nearby wall and continued to restrain him. The wall was approximately five to seven feet away. PO Rivera had a memo book entry (Board Review 8) that indicated that he struck § 87(2)(b) with an open hand and pushed him up against a wall to detain him.

The T.R.I. Report (Board Review 9) generated by PO Rivera indicates a hand strike was used against § 87(2)(b) to overcome resistance or aggression.

It is undisputed that the only crime § 87(2)(b) had committed prior to PO Rivera approaching was nonviolent in nature.

PO Rivera, PO Khader, and PO Calvanese testified that the motion § 87(2)(b) made immediately following PO Rivera grabbing his hand made it appear as if § 87(2)(b) was going to strike PO Rivera. PO Khader testified § 87(2)(b)'s hand was in a closed fist, while PO Rivera and PO Calvanese could not remember if it was a closed fist or open palm. Neither § 87(2)(b) nor § 87(2)(b) testified that § 87(2)(b) made a motion as if he was going to strike PO Rivera.

The officers and § 87(2)(b) testified that it took several minutes to restrain § 87(2)(b). § 87(2)(b) testified he resisted for approximately 15 to 30 seconds.

§ 87(2)(b) testified to actively resisting by pushing PO Rivera on his chest and pulling his arms away. The officers and § 87(2)(b) testified that § 87(2)(b) resisted by tensing and turning his body, flailing his arms, sinking down, and attempting to walk back and forth.

It is undisputed that § 87(2)(b) did not attempt to evade arrest by flight.

§ 87(2)(b) is a § 87(2)(b)-old male, 5'10" tall, and 160lbs. There were four officers involved in the stop and arrest of § 87(2)(b). PO Rivera is a § 87(2)(b)-old male who stands 5'11" tall and weighs 225lbs.

§ 87(2)(b) has not been convicted of any crime in New York City. Neither PO Rivera nor any of the other officers indicated that § 87(2)(b) had a known violent history.

The incident did not attract the presence of a hostile crowd or agitators.

§ 87(2)(b) was not suspected of being under the influence of a stimulant and/or narcotic, as evidenced by the box checked “No” in the corresponding T.R.I (Board Review 9).

As stated in Patrol Guide Procedure 221-01 (Board Review 10), an officer’s use of force must be reasonable under the circumstances. The reasonableness of the use of force by a police officer is determined by the following factors:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject’s violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation D- Force: Police Officer Robert Rivera used physical force against § 87(2)(b)

§ 87(2)(b) testified (Board Review 1) that prior to being pushed against the wall, PO Rivera utilized a closed fist hand strike on the right side of his face. § 87(2)(b) alleged the closed fist strike caused a small bruise on his chin. § 87(2)(b) did not allege this in his initial website complaint (Board Review 7).

§ 87(2)(b) (Board Review 6) did not corroborate the allegation and testified that PO Rivera only utilized an open palm hand strike against § 87(2)(b).

PO Rivera (Board Review 2) testified to using an open palm hand strike and denied utilizing a closed fist hand strike against § 87(2)(b).

The bruise § 87(2)(b) alleged he sustained because of PO Rivera's closed hand strike is not visible in his arrest photograph (Board Review 11).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 14).
- PO Rivera has been a member of the NYPD for six years and is the subject of two prior complaints, involving four allegations. None of the allegations have been substantiated. CCRB case #201902943 is currently being investigated by Investigator Tessa Yesselman of Squad 3. Of PO Rivera's four prior allegations, one is for physical force (Board Review 15).

- PO Calvanese has been a member of the NYPD for 11 years and is the subject of four prior complaints, involving 10 allegations. None of the allegations have been substantiated. § 87(2)(g) (Board Review 16).

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation due to § 87(2)(b)'s arrest.
- § 87(2)(b) has no criminal convictions in New York City (Board Review 17).
- A May 25, 2018 inquiry to the Office of the City of New York Comptroller revealed no notice of claim filed by § 87(2)(b)

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date